

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Streamlined Reauthorization Procedures for)	
Assigned or Transferred Television Satellite)	MB Docket No. 18-63
Station)	
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
)	

To: Marlene Dortch, Secretary
Attention: Chief, Media Bureau

COMMENTS OF GRAY TELEVISION, INC.

Gray Television, Inc. (“Gray”), by its attorneys, hereby files comments in response to the Commission’s Notice of Proposed Rulemaking seeking comment on proposed changes to the Commission’s process for reauthorizing television satellite stations.¹ Gray supports the Commission’s decision to modernize its process for reauthorizing satellite television stations. Specifically, Gray urges the Commission to adopt changes outlined in the *NPRM* and to specifically adopt the proposal outlined in Gray’s June 26, 2017 *ex parte* letter, which would permit applicants acquiring a satellite station to utilize the streamlined reauthorization procedure when they seek authority to operate an existing television satellite station with a different parent station.² As Gray demonstrates below, making those changes will serve the public interest, relieve applicants of unnecessary regulatory burdens, and allow Commission staff to use its limited resources on other more significant matters.

¹ Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations, *Notice of Proposed Rulemaking*, FCC 18-34 (rel. Mar. 23, 2018) (“*NPRM*”).

² Letter from Kevin P. Latek, Executive Vice President, Gray Television, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105 (filed June 26, 2017), attached as Exhibit A (the “*Ex Parte* Letter”).

I. Introduction

Television satellite stations are full-power television stations that repeat some or all of the programming of a host or parent station. Television satellite stations often serve lesser populated areas of the parent station's market and help to provide coverage when the parent's over-the-air signal cannot reach certain parts of its television market. In addition, broadcasters can use television satellite stations to provide an over-the-air signal to cable headends in a cost-effective and efficient manner to distribute further their signals to cable subscribers within their market. Because these television satellite stations provide a signal to areas that otherwise could go unserved, television satellite stations are critical to broadcasters' core mission of providing its programming to the local market. Given the importance of these facilities to broadcasters' service to the public, efficient licensing and transfer of satellite stations plainly is in the public interest. Today, however, obtaining a new television satellite authorization or reauthorizing an existing waiver requires broadcasters to demonstrate through an arduous and expensive process that satellite status is warranted.

As described in the *NPRM*, the Commission currently reviews requests for reauthorization of television satellite stations pursuant to a nearly thirty-year-old standard developed when ownership of multiple stations in a market was practically forbidden.³ Under that standard, the Commission applies a rebuttable presumption in favor of granting a satellite waiver if: (1) there is no City Grade overlap between the parent and the satellite station; (2) the satellite station serves an underserved area; and (3) no alternative operator is ready and able to

³ Television Satellite Stations Review of Policy and Rules, *Report and Order*, 6 FCC Rcd 4212 (1991).

construct or to purchase and operate the satellite station as a full-service station.⁴ If one of these three criteria is not met, the Commission will evaluate the request for waiver on an *ad hoc* basis to determine if the circumstances warrant approval of the waiver.⁵ The rebuttable presumption portion of this test, however, has been moribund for years because digital television stations do not have a City Grade contour, and the Commission has never adopted an equivalent standard. In practice, therefore, the Commission evaluates all requests for new and continued satellite status using the *ad hoc* public interest review. This showing requires applicants to make an extensive public interest showing to preserve a satellite authorization that will rarely be in doubt.

While Gray appreciates the Commission's need to fully evaluate whether initial requests for a satellite waiver for a particular station serve the public interest, this same type of searching proceeding is unreasonable and unnecessary when a station's ownership changes hands. Gray therefore requests that the Commission adopt the proposal in the *NPRM* and, in addition, make it clear that a change of the parent station also should be permitted.

II. The Commission Should Modernize Its Review of Requests to Reauthorize Television Satellite Stations.

The Commission should adopt its tentative conclusion that applicants seeking transfer of a previously approved satellite station waiver need not make a full demonstration where the underlying circumstances have not materially changed. Preparing and filing a request for satellite waiver is a costly and time-consuming process. And in the case of transfers of existing waivers, the process forces the Commission to reconsider matters that it has already concluded are in the public interest and to write another decision stating that the circumstances continue to merit a satellite waiver. Stated differently, the proposal to streamline the review of television

⁴ *Id.* at 4213-15, ¶¶ 12-20.

⁵ *Id.* at 4212, ¶ 14.

satellite stations is a win-win-win outcome. Broadcasters will benefit from having a review process that is more timely and cost efficient. The Commission will be able to use its limited resources on more significant issues that actually require the Commission's attention. And finally, the public will benefit because broadcasters will be able to continue to serve the more remote and underserved areas of the country with an over-the-air signal.

The Commission wisely tentatively concluded to adopt a streamlined process for reauthorization of television satellite stations. Specifically, the Commission stated that "the public interest will be served by permitting a previously approved parent/satellite station combination to be assigned without the reauthorization request that currently is required and without a written Commission decision" upon satisfaction of two conditions. First, the applicants must include in the assignment or transfer application a certification by both parties that the underlying circumstances upon which the Commission relied upon in granting the satellite authorization have not changed materially since the most recent authorization. Second, the parties must include with the application a complete copy of the most recent written Commission decision granting the satellite exception for the satellite station(s). After filing the application, interested parties that wish to challenge the certification would have the opportunity to file an objection during the standard pleading cycle provided for assignment and transfer applications, and the applicants would have the opportunity to respond to any such challenge.⁶

By adopting the Streamlined Reauthorization Procedure, the Commission will save broadcasters from preparing unnecessary, expensive, and time consuming demonstrations that continuation of satellite waivers remain in the public interest. For example, for almost all of Gray's recent applications seeking consent for continued satellite status, it has asked a consulting

⁶ Gray refers to the Commission's proposal as the Streamlined Reauthorization Procedure.

engineer to prepare a contour map with the stations' current and former City Grade contours, a broker to demonstrate why the satellite cannot operate as a stand-alone station, and attorneys to prepare and file the waiver request based on the information provided by the consulting engineer and the broker. It takes numerous man-hours to prepare such requests and the costs can total more than \$10,000. And since the Commission has granted scores of requests to continue operating television stations without ever denying such a request, it seems that the Commission's current policy forces the staff to review the information provided by the applicants and write a perfunctory decision granting the waiver that serves no useful purpose.

The current policy has a disproportionately negative effect on small entities and stations in rural areas. The costs and time associated with preparing requests for continuation of satellite waivers may discourage smaller operators from attempting to expand their operations to include television satellite stations. For small and rural operators, even the small amount of uncertainty created by a satellite waiver may discourage efforts to buy and more efficiently operate television satellite stations.

III. The Commission Should Extend Its Streamlined Reauthorization Procedure to Transactions That Propose a New Parent Station.

The Commission should not limit the Streamlined Reauthorization Procedure to existing parent/satellite combinations. Instead, applicants should have the ability to propose new parent/satellite combinations using the same certification procedure. As Gray described in its *Ex Parte* Letter, the FCC does not consider the health or economic viability of the parent station when determining if a station qualifies as a satellite. Instead, the Commission's analysis focuses on whether there is contour overlap between the parent station and the satellite station, whether the *satellite station* serves an underserved area, and whether there is an alternative operator that is ready and able to operate the *satellite station* as a stand-alone full-service station. As

recognized in the *NPRM*, the Commission also considers “alternative showings . . . including expert declarations as to the signal quality, geographic conditions, and/or market conditions and the expected difficulty of finding a buyer to operate the [satellite] station on a standalone basis.”⁷ In other words, the Commission’s review of requests for satellite waivers focuses on whether the satellite could operate without its association with *any* full power station – not on the merits of a particular parent/satellite combination.

Moreover, allowing changes to a parent station will not jeopardize the public interest. The Commission has never denied a request for continued satellite authority for a previously granted satellite waiver, including those that propose changes in the parent station. Under Gray’s proposal, applicants would still be required to certify that the circumstances under which the Commission granted the most recent satellite waiver have not materially changed. And while the application is pending, the Commission and the public would have the opportunity to challenge the certification made by the applicants. Therefore, if anyone had concerns with a proposed change in the parent entity, that person would still be able to express his or her concerns with the proposal and the Commission would have an opportunity to further scrutinize the proposal in the same way as any other streamlined reauthorization request.

As discussed in the *Ex Parte* Letter, facilitating the process for assignees/transferees to modify the parent/satellite relationship has the potential to bring substantial public interest benefits. For example, in 2016, Gray acquired television satellite station KNEP-TV, Scottsbluff, Nebraska from Schurz Communications. Before Gray acquired KNEP-TV, it operated as an out-of-state satellite to KOTA-TV, Rapid City, South Dakota. Gray has since converted KNEP-TV to a satellite of KNOP-TV, North Platte, Nebraska bringing locally produced news, sports,

⁷ *NPRM* at 2 fn. 10.

weather, and emergency information for the first time to viewers in the Nebraska panhandle. Given the clear public interest benefits at stake in cases like that one, streamlined processing for satellite transfers is simply good policy. The Commission should not continue to create a barrier to broadcasters' efforts to best serve the public interest by requiring a full public interest demonstration when a satellite station is being assigned or transferred or when an applicant proposes to change the parent of an already authorized television satellite station.

IV. Conclusion

For the foregoing reasons, Gray respectfully request that the Commission grant changes to its policy concerning the reauthorization of satellite stations as described herein.

Respectfully submitted,

GRAY TELEVISION, INC.

/s/ John R. Feore_____

Its Attorneys

John R. Feore, Jr.
Jason E. Rademacher
Cooley LLP
1299 Pennsylvania Ave., N.W.
Suite 700
Washington, D.C. 20004
(202) 776-2668

Its Attorneys

May 11, 2018

Exhibit A

Gray June 26, 2017 *Ex Parte* Letter



June 26, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TW-A325
Washington, DC 20554

Re: Modernization of Media Regulation Initiative
Public Notice – MB Docket No. 17-105

Dear Ladies and Gentlemen:

Gray Television, Inc. (“Gray”) appreciates the Commission’s initiation of a proceeding to review, modify and repeal media-related regulations that impose unnecessary burdens for little or no benefit and, as such, stand in the way of competition and innovation in the media marketplace.

In the spirit of that proceeding, Gray submits that the Commission can and should act immediately – without waiting for a lengthy rulemaking proceeding – to eliminate wasteful and time-consuming policies related to the transfer and assignment of licenses for demonstrably uncompetitive full-power satellite television stations.

Specifically, the Commission should direct the Media Bureau today to adopt new Processing Guidelines that eliminate the need for applicants to re-demonstrate, and for the Bureau to review and write a decision reaffirming, the uncompetitive nature of full-power television stations that previously have been designated as “satellite stations.” Thereafter, whether through this Docket or another Docket, the Commission should codify this common sense reform.

Background. In *Television Satellite Stations*, the Commission established an exception to its multiple ownership and main studio rules for television stations that it determines are unable to operate on a stand-alone basis, thereby allowing such stations to be operated by distant “parent stations” that themselves comply with the multiple ownership and main studio rules.¹ In this manner, the Commission has preserved free, over-the-air service to rural communities despite a demonstrated lack of advertising revenues to support ongoing operational costs. Gray owns 15 satellite stations, 12 of which Gray acquired in the past four years.

¹ *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd. 4212, 4215 (1991)(subsequent history omitted). To obtain satellite status, an applicant must demonstrate compliance with a three-part standard or demonstrate otherwise compelling circumstances. The presumptive standard consists of three public interest criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station. *Id.*

Among the many broadcast ownership rules, policies, and processing guidelines are provisions that require certain applicants to submit lengthy, costly, and unnecessary requests to continue satellite station waivers that the Commission previously granted simply because the owners are seeking approval of new ownership or revised control of the station. Renewing these waivers upon every assignment or transfer of a broadcast license serves no rational purpose.

Current Policy Creates Zero Benefits While Imposing Wholly Unnecessary Costs

First, the mere sale of a station operating under a satellite waiver does not mean that the underlying conditions warranting the waiver have improved. To the contrary, we are unable to find a single instance in which the Commission found that a sale or transfer revealed new facts warranting revocation of a satellite station waiver.

This result should come as no surprise. The Commission grants satellite waivers only after a thorough investigation of the facts and release of written findings based on specific evidence that the subject station faces local economic conditions that make it impossible for the station to operate independently. Requiring re-authorization of a satellite waiver makes sense only if the Commission assumes that there is a good chance conditions have improved such that the waiver is no longer necessary. There is no basis for this assumption because the local broadcast business faces more, not less, economic challenges today than any prior point in time. Moreover, the rural, sparsely populated areas served by satellite stations face their own unprecedented challenges.² Whether the Commission concluded that a particular station could not operate independently one year ago or twenty years ago, it is highly unlikely that local market conditions will have miraculously improved in the intervening time period, and the Commission's policies should reflect that reality.

Second, threatening to revoke satellite status upon a sale or transfer creates a substantial disincentive to invest in these struggling stations in rural and economically depressed areas. Public policy should not threaten to punish an owner that has succeeded in investing in these troubled areas and improving a station's economic prospects. Instead, public policy should encourage broadcasters to buy and invest in satellite stations and their local communities for the long-term.

Third, it is illogical for the Commission to continue to require applicants to hire brokers, lawyers, engineers and/or economists simply to continue these previously-granted waivers while the Commission freely allows the transfer of stations in identical situations without the cost and time burdens of seeking a new waiver. In particular, the Commission has authorized and granted numerous waivers of the main studio rule for television stations in underserved areas utilizing the exact same standards that warrant satellite waivers,³ but unlike satellite waivers, main studio waivers are transferrable to future owners. The only difference between stations with a satellite waiver and those with a main studio waiver is that the latter have contours that overlap with their parent stations, while main-studio-waiver stations do not have contour overlap. This is a distinction without a difference. If a station serves an area that cannot support an independently operated television station, it makes no difference to the local community whether the Commission has granted a main studio or a satellite waiver to the station. Yet, in the context of a transaction, an applicant faces costs and delays if the station has a satellite rather than a main studio waiver.

² Janet Adamy & Paul Overberg, *Rural America is the New 'Inner City,'* Wall St. J. (May 26, 2017), <https://www.wsj.com/articles/rural-america-is-the-new-inner-city-1495817008>.

³ See, e.g., *Shareholders of CBS Corp.*, 15 FCC Rcd 8230, 8244, ¶ 40 (2000) (granting a main studio waiver based on factors that otherwise would justify continued satellite authority under the *ad hoc* test).

Fourth, these waiver re-authorization requests impose delays and costs on the applicants, the parties and employees in a transaction, as well as the Commission. A transaction requiring the preparation, review, processing and writing of a decision granting renewal of a satellite waiver will take double or triple the amount of time it takes to obtain approval of sale or transfer of a license absent a waiver. These outdated requirements waste the resources of Commission staff who always have more consequential matters that demand their time and resources. It bears repeating: despite reviewing scores of requests to renew satellite waivers since 1991, this investment of Commission resources has not once led to the denial of a new waiver request for a station that previously obtained a satellite waiver.

In short, the regulations and policies requiring applicants to re-demonstrate, and the Commission to review and write a decision reaffirming, satellite waivers serve no rational purpose, impose unnecessary delays and waste the resources of private parties and the Commission itself.

Gray's Proposal to Reform the Flawed Satellite Waiver Policy

We do not foreclose the (heretofore unseen) possibility that local market conditions that once prevented the independent operation of a television station could radically improve over time, thereby obviating the need for a satellite waiver. For that reason, we propose a new Processing Guideline and subsequent codification of a rule that includes a “safety valve” permitting the public and the Commission to address this potential situation, without subjecting each and every station sale to the costs and delays of a new waiver request.

In particular, we propose that:

1. The Commission adopt a policy that immediately waives⁴ any and all provisions requiring issuance of a new waiver to replace a previously granted satellite waiver upon a transfer of control or assignment of license for such a station.
2. Licensees of such stations should be permitted to assign and transfer the licenses freely, that is, without a waiver request and without a written decision granting a new waiver, provided that:
 - (A) the proposed assignor and assignee certify in the relevant assignment and transfer applications that the underlying circumstances that were relied upon by the Commission in granting the current waiver have not changed materially since the issuance of the waiver, and
 - (B) one of the applicants uploads to the assignment or transfer application a complete copy of the written Commission decision granting the current waiver.
3. A grant of satellite status for a station would be specific to the station itself and not a particular parent-satellite combination, thus, giving licensees the flexibility to change

⁴ Immediate relief through the issuance of a blanket waiver via Processing Guidelines is permitted, if not compelled, by the Commission's obligation to regulate, and to waive unnecessary regulations, as necessary to advance the public interest. See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

a satellite station's parent without the need to re-demonstrate that the satellite continues to operate in an underserved area.

4. Through this Docket or another Docket, the Commission should codify the Processing Guideline outlined above.

This certification-and-upload approach would provide an opportunity for interested parties to review the most recent satellite waiver decision when reviewing the subject assignment or transfer application. If an interested party disagrees with the applicants' certifications, that individual could object to the application through the normal Public Comment process by bringing to the Commission's attention such facts and circumstances that are believed to warrant the cessation of the subject waiver upon the closing of the proposed transaction. The applicants could respond through the normal pleading cycle. Thereafter, the Commission would be able to analyze the facts and circumstances surrounding the waiver after the development of a complete record. Absent any opposition, however, the Commission should grant the application based on the applicants' certifications.

Moreover, by clarifying that a station's satellite status is not dependent on serving as a satellite to a particular parent station, it will provide licensees with sufficient flexibility to change a satellite's parent station to better serve local market conditions without the need to undergo additional Commission review. After all, if a station serves an underserved area as a satellite, it does not matter what station serves as its parent. Gray has firsthand experience for why this flexibility is so important. In 2016, Gray acquired KNEP-TV, Scottsbluff, Nebraska, and KSGW-TV, Sheridan, Wyoming. At the time, both stations operated as out-of-state satellites to KOTA-TV, Rapid City, South Dakota. Gray has since converted KNEP-TV and KSGW-TV to satellites of KNOP-TV, North Platte, Nebraska, and KCWY-TV, Casper, Wyoming, respectively, bringing in-state news and information for the first time to residents in these underserved areas.⁵ By confirming that satellite licensees have the flexibility to change a station's parent without prior Commission approval, licensees will be able to quickly adapt to local market conditions and better serve the public interest.

The Commission Should Adopt This Reform TODAY

We respectfully urge the Commission to revise its Processing Guidelines immediately to narrow its review of satellite station waivers and thereby speed Commission review of transactions. In this manner, the Commission could afford immediate relief to parties and the Commission itself without any negative impact or costs, all while preserving its ability to review any cases that truly warrant its review.

Respectfully submitted,



Kevin P. Latek
Executive Vice President, Gray Television, Inc.

⁵ Schurz Communications, Inc, *Letter*, 31 FCC Red 1113 (2016). In its decision approving Gray's acquisition of these stations, the Commission recognized the significant public interest benefits accruing from changing the parent stations of these satellites.